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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

EVERGREEN HOSPITAL MEDICAL
CENTER,

Appellant,

v.

PUGET SOUND AIR POLLUTION CONTROL
AGENCY,

Respondent.

PCHB No. 87-15

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of Notice and Order of Civil Penalty No. 6606 assessing \$1,000 for alleged violations of regulations concerning asbestos removal, came on for hearing before the Pollution Control Hearings Board; Wick Dufford, Chairman, Lawrence J. Faulk, Presiding, and Judith A. Bendor, Member, on September 3, 1987, in Seattle, Washington. Respondent elected a formal hearing.

Appellant Evergreen Hospital Medical Center, was represented by its Director of Plant Operations, Dan Garber. Respondent Agency was represented by Keith D. McGoffin, attorney at law. The proceedings were transcribed.

1 Witnesses were sworn and testified; exhibits were examined;
2 argument was heard. From the testimony, exhibits, and contentions of
3 the parties, the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant Evergreen Hospital Medical Center is a hospital located
7 at 12040 NE 128th Street, in Kirkland, Washington.

8 II

9 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a
10 municipal corporation with responsibility for administering a program
11 of air pollution prevention and control in a multi-county area which
12 includes the site which is the focus of this dispute.

13 PSAPCA has filed with this Board a certified copy of its
14 regulations of which the Board takes official notice.

15 III

16 On March 1, 1986, Evergreen Hospital Medical Center filed with
17 PSAPCA a Notice of Intent to Remove or Encapsulate Asbestos at the
18 hospital in connection with a renovation project. The notice set
19 forth March 1, 1986, as the starting date and February 28, 1987, as
20 the completion date. The form did not indicate the amount of asbestos
21 to be removed or the method of removal.

IV

On October 21, 1986, two PSAPCA inspectors, responding to a complaint, visited the project at Evergreen and observed what they believed to be deficiencies in the work practices relating to asbestos removal. They contacted appropriate hospital personnel and advised of concerns about potential exposure of the public and hospital staff to asbestos fibers.

V

On October 23, 1986, the PSAPCA inspectors (accompanied by an inspector from the Department of Labor & Industries) arrived at the job site to conduct a follow-up inspection of the asbestos removal operation. In the cafeteria area being used by the public, they observed pieces of what they thought was asbestos-containing material on the floor. An inspector collected a sample, filled out a field sample data and chain of custody sheet. The inspectors observed that the part of the cafeteria where the renovation activity was going on was separated from the area currently being used by the public and the hospital employees by a temporary wall. In the renovation area the asbestos was exposed (not enclosed by the false ceiling).

The inspectors next entered the employees' room where renovation was also underway. Again they observed what appeared to be asbestos-containing material on the floor and collected a sample. The information concerning this sample was added to the field sample data

1 and custody sheet mentioned above. The inspector observed that
2 visqueen plastic sheeting was hanging in front of the door to the
3 employees' room and appeared to be intended to provide containment for
4 this area. However, one end of sheeting was loose, and the room was
5 unlocked and accessible. An inspector took photographs.

6 VI

7 Analysis of the material collected on October 23, 1986, showed a
8 15% asbestos content (chrysotile).

9 VII

10 On November 13, 1986, Notice of Violation Number 021787 was issued
11 to Evergreen Hospital Medical Center asserting a violation of the
12 agency's asbestos-handling regulations. The violation was
13 subsequently, on January 9, 1987, made the subject of Notice and Order
14 of Civil Penalty no. 6606, assessing a \$1,000 fine.

15 The civil penalty notice identified the violation on October 23,
16 1986, of PSAPCA Regulation I as failure to adequately wet and seal all
17 asbestos-containing material in leaktight containers while wet.
18 Section 10.05 (1)(IV). Feeling aggrieved by this decision, Evergreen
19 Hospital Medical Center filed an appeal with this Board on January 27,
20 1987.

21 VIII

22 After some difficulties with contractors, the Evergreen Hospital
23 Medical Center undertook this asbestos removal project itself. Prior
24 to this project, the hospital Center had not been involved in such an
25

1 undertaking. The hospital had been consulting with the Department of
2 Labor and Industries during the course of this asbestos removal
3 project and felt they had been following proper procedures. The
4 director of plant operations noted that no asbestos removal work was
5 being done in either area where the asbestos fragments were found.

6 Following the inspection on October 23, 1986, and after subsequent
7 consultation with PSAPCA, the remaining asbestos involved in the job
8 was removed without further difficulties.

9 IX

10 Any Conclusion of Law which is deemed a Finding of Fact is hereby
11 adopted as such.

12 From these Findings of Fact, the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 The Board has jurisdiction over the subject matter and the
16 parties. Chapters 43.21B and 70.94 RCW. The case arises under
17 regulations implementing the Washington Clean Air Act, set forth in
18 PSAPCA's Regulation I, at Article 10.

19 II

20 The hospital's position is that they did not intend to commit any
21 violations, that they made every effort to take the necessary steps to
22 dispose of asbestos-containing waste in the proper manner, and that
23 after problems were discovered, they corrected them. On these bases
24 they seek elimination or substantial reduction of the penalty.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 87-15

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III

The Washington Clean Air Act is a strict liability statute and acts in violation of its implementing regulations are not excused on the basis of absence of intent. RCW 70.94.431

IV

Asbestos is a substance which has been specially recognized for its hazardous properties. Pursuant to Section 112 of the Federal Clean Air Act asbestos is the subject of work practices adopted under the heading of National Emission Standards for Hazardous Air Pollutants. It is a substance which by legal definition

causes, or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness.

In Article 10 of its Regulation I, PSAPCA has adopted its own standards for the removal and disposal of asbestos which are at least as stringent as the federal standards.

V

We conclude that the fragments found by the inspectors on October 23, 1986, at Evergreen Hospital Medical Center were "asbestos material" as defined by Regulation I, Section 10.02(e). No contention was made to the contrary.

VI

The hospital is alleged to have violated Regulation I, Section

1 10.05(b)(1)(iv), a provision dealing with the disposal of
2 asbestos-containing material. We conclude that the fragments
3 discovered in this case were in violation of the cited requirement to
4 wet and seal all asbestos-containing waste materials in leak-tight
5 containers while wet, as a part of the disposal process. We further
6 conclude that the hospital, which was performing the work, is legally
7 responsible, under the facts.

8 VII

9 In cases involving civil penalties, we review the amount of the
10 penalty assessed in light of factors bearing on reasonableness. The
11 purpose of such penalties is to influence behavior and to deter future
12 violations both by the perpetrator and by the regulated community
13 generally.

14 Frequently corrective action by the violator is a mitigating
15 factor. In asbestos cases, however, the seriousness of the offense
16 substantially outweighs the influence of after-the-fact reforms. The
17 extraordinary dangerousness of asbestos supports the imposition of
18 significant penalties for the violation of procedures designed to
19 protect against the hazard.

20 This is particularly true in cases like the present one, involving
21 risk of exposure, not just to the workers in the immediate area, but to
22 the public at large. AK-WA, Inc. v. PSAPCA, PCHB No. 86-111 (1987).

23 We think it vital that all persons associated with projects which
24 involve asbestos removal be induced to exercise the highest degree of
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1 care in insuring that the risk of harm is minimized.

2 Therefore, we decide that, in light of the circumstances, the
3 amount of penalty was reasonable and should be upheld.

4 VI

5 Any Finding of Fact which is deemed a Conclusion of Law is hereby
6 adopted as such.

7 From these Conclusions the Board enters this
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ORDER

PSAPCA's Notice and Order of Civil Penalty No. 6606 is AFFIRMED.

DONE this 14th day of April, 1988.

POLLUTION CONTROL HEARINGS BOARD

 4/14/88
LAWRENCE J. PAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

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